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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/990,770	11/21/2001	Melody Vos	149-0046US	1825
29855 7590 08/14/2008 WONG, CABELLO, LUTSCH, RUTHERFORD & BRUCCULERI, L.L.P. 20333 SH 249 SUITE 600 HOUSTON, TX 77070				
			EXAMINER ABEL JALIL, NEVEEN	
			ART UNIT 2165	PAPER NUMBER
			MAIL DATE 08/14/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

09/990,770

**Applicant(s)**

VOS ET AL.

**Examiner**

Neveen Abel-Jalil

**Art Unit**

2165

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 July 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4, 6, 8-10, 12-19, 21, 23-25, 27-34, 36, 38-40 and 42-45 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6, 8-10, 12-19, 21, 23-25, 27-34, 36, 38-40 and 42-45 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### Remarks

1. In response to Applicant's Amendment filed on July 12, 2008, claims 1-4, 6, 8-10, 12-19, 21, 23-25, 27-34, 36, 38-40 and 42-45 are pending.

### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claim 1-4, 6, 8-10, 12-19, 21, 23-25, 27-34, 36, 38-40 and 42-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fangzhe Chang & Vijay Karamcheti, Automatic Configuration and Run-Time Adaptation of Distributed Applications. IEEE 2000. (hereon in Chang et al.)-previously presented- in view of Blattmann-Bleile et al. (U.S. Patent No. 5,884,311).

As to claims 1, 16, and 31, Chang et al. discloses

associating management criteria with the repository (database) to manage repository (database) objects (See Chang et al. page 13, paragraphs 3-6, wherein "management criteria" is interpreted in view of Applicant's disclosure to be "statistics", and wherein "associating" is broad language and can simply be interpreted to include "storing", and wherein "repository" is

be read on server and its resources in place of Applicant's database, see complete 103 rejection below);

collection statistics relating to the operation of the repository (database) (See Chang et al. page 14, wherein "QoS metrics" are statistics, also see Chang et al. page 15, paragraph 2); and

determining characteristics of the repository (database) objects based on the collected statistics (See Chang et al. page 16, paragraph 4, also see Chang et al. page 17, paragraphs 1-3);

determining actions to be performed on one or more repository (database) to modify the one or more repository (database) objects based on the management criteria and the determined characteristics of the repository (database) objects (See Chang et al. page 12, paragraph 1);

modifying the one or more repository (database) objects by performing the actions on the repository (database) objects (See Chang et al. page 12, paragraph 3);

monitoring results of modifying the (database) objects (See Chang et al. page 12, paragraph 2); and

reconfiguring the management criteria associated with the (database) objects based on the results of modifying the (database) objects (See Chang et al. page 11, abstract, also see Chang et al. page 12, paragraph 8).

Chang et al. teaches the claimed invention but does not teach it to be specific to a database or database object. Chang et al. directs his invention to a server and server objects (application resources).

Blattmann-Bleile et al. teaches dynamic reconfiguration of databases by monitoring database objects (See abstract, and see column 5, lines 42-46).

Both Chang et al. and Blattmann-Bleile et al. are from analogous art dealing with monitoring systems, collecting statistics, modifying configurations.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Chang et al. by the teachings of Blattmann-Bleile et al. to include the functionality of management application governing a network server and its resource utilization to a database and database objects because servers can include database and can be themselves considered an organized structured body of data used for storage and retrieval as prevalent in the art.

As to claims 2, 17, and 32, Chang et al. as modified discloses automatically determining a schedule to perform the actions on the database objects, wherein the performing the actions on the database objects comprises performing the actions on the database objects based on the schedule (See Chang et al. page 13, paragraph 10).

As to claims 3, 18, and 33, Chang et al. as modified discloses wherein the performing the actions on the database objects based on the schedule comprises automatically performing the actions on the database objects based on the schedule (See Chang et al. page 13, paragraph 10).

As to claims 4, 19, and 34, Chang et al. as modified discloses confirming the performing the actions on the database objects (See Chang et al. page 14, paragraph 2, wherein “performing an action” reads on “adaptation” taking place or moving to next execution).

As to claims 6, 21, and 36, Chang et al. as modified discloses wherein the determining the characteristics of the database objects comprises automatically determining the characteristics of the database objects (See Chang et al. page 13, paragraph 4, also see Chang et al. page 13, paragraph 10).

As to claims 8, 23, and 38, Chang et al. as modified discloses wherein the determining the actions to be performed on the database objects based on the characteristics of the database objects comprises automatically determining the actions to be performed on the database objects based on the characteristics of the database objects (See Chang et al. page 17, paragraphs 3-4).

As to claims 9, 24, and 39, Chang et al. as modified discloses wherein the statistics comprise object-level statistics (See Chang et al. page 14, paragraph 1).

As to claims 10, 25, and 40, Chang et al. as modified discloses wherein the statistics comprise activity-level statistics (See Chang et al. page 14, paragraph 1).

As to claims 12, 27, and 42, Chang et al. as modified discloses wherein the determining the characteristics of the database objects comprises determining the characteristics of the database objects using one or more policies in the management criteria (See Chang et al. page 14, paragraph 5, also see Chang et al. page 17, paragraph 3).

As to claims 13, 28, and 43, Chang et al. as modified discloses wherein the determining the characteristics of the database objects comprises determining the characteristics of the database objects using one or more definitions in the management criteria (See Chang et al. page 16, paragraph 4).

As to claims 14, 29, and 44, Chang et al. as modified discloses customizing the one or more definitions in the management criteria (See Chang et al. page 17, section 5.2. wherein “customizing” reads on “interest to the user”).

As to claims 15, 30, and 45, Chang et al. as modified discloses customizing the one or more policies in the management criteria (See Chang et al. page 12, paragraph 1, also see Chang et al. page 13, paragraphs 4-6).

#### ***Response to Arguments***

4. Applicant's arguments filed on July 12, 2008 have been fully considered but they are not persuasive.

Applicant's argument in section A that “The Rejection Fails to Present a Prima Facie Case of Obviousness (1) The Obviousness Rejection Simply Reiterates Previous Section 102 Rejections and Cites Discrete Portions of a Secondary Reference” is respectfully acknowledged but not deemed to be persuasive.

In this section the Applicant profess the above argument by stating the “present rejection fails to present fails to present a prima facie case of obviousness because it merely reiterates previous arguments presented against the claims in second 102 rejection” with which the Examiner strongly disagrees.

The statements given in the 103 rejection are not arguments; they are the evidence provided with the rejection. Further, it is noted that there are no coherent arguments in this section as to why the applicant feels that the rejection as stated is not proper in view of the art. The applicant is merely making a general allegation that the claims are patentable over the cited art.

In response to the applicant’s arguments in section A (2) questioning the objective reasoning to combine the references, the arguments have been considered, but are not deemed persuasive. In obviousness law, it is commonplace that combination of two things typically used together into a single thing is obvious unless the applicant can show secondary considerations rebutting the apparent obviousness. See, e.g., *Anderson’s-Black Rock, Inc. v. Pavement Salvage Co.*, 396 U.S. 57 (1969); *Richardson-Vicks Inc. v. Upjohn Co.*, 122 F.3d 1476, 44 USPQ2d 1181 (Fed. Cir. 1997).

In response to the applicant’s arguments in section A (3) directed to the combination of the Chang and Blattmann references, the arguments have been considered, but are not deemed persuasive.



The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). According to MPEP 2143.01, if the applicant can show how combining  $\diamond$  produces a result that would not have been predictable to one of ordinary skill in the art at the time of the invention, the applicant can demonstrate why the combination might have not been obvious. It is not clear to the examiner why the combination does not produce a result that would have been predictable.

Applicant's argument section B that "Chang in view of Blattmann still fails to render the claims obvious even if combinable" is respectfully acknowledged but not deemed to be persuasive.

Applicant specifically states on page 14 of the remarks that "the OA only makes assertions without any support whatsoever showing how the cited references teach the applicant's claims" with which the Examiner disagrees since the OA reproduced above offers citations from both references matching the functionality claimed on top of which, it is well understood that the Applicant is responsible for the cited references as a whole in their entirety.

Applicant argues on top of page 15 in the remarks that the "Examiner has previously stated in the Final OA (mailed on 8/9/07) is broadly interpreting the recitation of "server"

application storing large images in Chang et al. to be “database” and that statement shows misinterpretation of the reference” is not found to be persuasive.

The arguments are moot since the final was withdrawn and a new non-final rejection was presented on 4/14/08 referring to Blattmann to teach a “database”. The Examiner has changed their position as clearly presented in the OA reproduced above.

Applicant continues arguing on the bottom of page 15 of the remarks that there is no discussion in Chang of ad database or database objects (or any equivalent entity), nor that Chang's framework for tuning the execution of a distributed application is even applicable to a database” is certainly not found to be persuasive.

Its unclear from Applicant's arguments why one of ordinary skill in the art would not consider Chang's server storing objects to offer equivalent functionality to a database nor why skilled artisan would not consider Blattmann's distributed database to be a “distributed application” as used by Chang. There is nothing implicit nor explicit in the cited prior art that preclude such conclusions if one of ordinary skill in the art were to be presents with both references at the time of the invention.

Applicant goes on to argue on page 16 of the remarks that “Blattmann does not teach any of the limitations missing from Chang” not found to be persuasive.

The argument its appear to be inconsistent with applicant's own statement made in line 18 on the same page of the remarks as the afternoted argument, which states “ Blattmann uses weighting and distribution (statistical) functions to optimize the configuration and distribution of

the distributed database for short processing times, low data transmission, and management costs. See Blattmann at col. 5, II. 20-37 & col. 7, II. 26-50. These functions can adapt to the changing background conditions and the dynamic reconfiguration of a database system” thus clearly teaches concept of using statistical data related to a distributed database operations to dynamically reconfigure and optimize said database just as the claims call for.

### ***Conclusion***

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neveen Abel-Jalil whose telephone number is 571-272-4074. The examiner can normally be reached on 8:30AM-5:30PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christian P. Chace can be reached on 571-272-4190. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Neveen Abel-Jalil  
August 13, 2008

/Neveen Abel-Jalil/

Primary Examiner, Art Unit 2165